IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 120 of 2001

in

SPECIAL CIVIL APPLICATIONNo 3101 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHIVAJI UPADHYAY

Versus

NATIONAL FEDERATION OF INDUSTRIAL COOPERATIVES LTD

Appearance:

1. LETTERS PATENT APPEAL No. 120 of 2001

MR RAJU K KOTHARI for Appellant

DELETED for Respondent No. 1

MR BIPIN I MEHTA for Respondents No. 2-3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Admitted. Mr. Bipin I. Mehta, learned counsel waives service of notice on behalf of the respondents no.2 & 3. At the joint request of the learned advocates for the parties, the appeal is taken-up for final disposal today.

2. By filing this appeal under clause-15 of the Letters Patent, the appellant has challenged legality of judgment dated January 20, 2001 rendered by the learned Single Judge in Special Civil Application No. 3101/91 with Civil Application No. 6096/2000, by which prayers made by the appellant to direct the respondents not to terminate his services and treat him as a regular employee, are rejected.

3. The appellant was employed as a peon by the respondents vide order dated May 20, 1987 upto June 30, 1987, but as the appointment for all practical purposes was a permanent appointment, the period of employment was extended by different letters. Lastly, the appointment of the appellant was extended upto April 30, 1991 by order dated February 28, 1991. Apprehending that his services would be terminated, the appellant approached the High Court by way of filing Special Civil Application No. 3101/91 and prayed that the respondents be restrained from terminating his services and that they be directed to treat him as regular employee. The learned counsel for the appellant has stated at the Bar that the appellant served the respondents upto February 24, 1999. The petition filed by the appellant is dismissed by the learned Single Judge vide judgment dated January 20, 2001 mainly on the ground that interim relief which was granted on April 29, 1991 was not got extended until another order was passed by the Court on August 12, 1992, giving rise to the present appeal.

4. We have heard the learned counsel for the parties. From the record of the petition, it is evident that on April 29, 1991 the petition was placed for admission hearing before the learned Single Judge of this Court, who had directed notices to be issued to the respondents making them returnable on June 17, 1991 and had restrained the respondents from terminating the services of the appellant till June 17, 1991. On August 12, 1992, the Court had passed following order :-

"Ad-interim relief granted earlier by this Court on 29.4.1991 is confirmed"

The above quoted order makes it evident that the interim relief, which was granted by the learned Single Judge on April 29, 1991, was to continue till the disposal of the petition and, therefore, the petition could not have been dismissed mainly on the ground that the interim relief granted on April 29, 1991 was not got extended until another order was obtained on August 12, 1992. Therefore, the impugned order is liable to be set aside. However, we find that the respondent no.2 i.e. National Federation of Industrial Cooperatives Limited, New Delhi is taken into liquidation and a liquidator is appointed. Therefore, the relief claimed by the appellant that the respondents should be directed not to terminate his services or that the respondents should be directed to treat him as a regular employee of the respondent no.2 cannot be granted, as those prayers have become infructuous in view of the subsequent events. So far as the claim of the appellant for arrears of salary is concerned, we are of the opinion that interest of justice would be served if the appellant is directed to lodge necessary claim before the Liquidator and the Liquidator is directed to consider the same in accordance with the provisions of law.

For the foregoing reasons, the appeal partly succeeds. Though the reliefs claimed by the appellant viz. that the respondents be directed not to terminate his services and to treat him as a regular employee, are rejected, it will be open to the appellant to lodge his claim for arrears of salary before the Liquidator, who shall pass orders in accordance with the provisions of the Companies Act. The appeal accordingly stands partly allowed, with no order as to costs.

(J.M.Panchal,J.)

(P.B.Majmudar,J)

(patel)